IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3021 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

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SUNIL RAMCHANDRA & 2 - Applicant(s)
Versus
DAHIBEN YASWANTBHAI MAKWANA & 1 - Respondent(s)

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Appearance :
MR AR MAJMUDAR for Applicant(s) : 1 - 3.
MR CB DASTOOR for Respondent(s) : 1,
MR SS PATEL ADDL PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 23/11/2006

ORAL JUDGMENT

1. The petitioners have invoked the provisions of section 482 of the Code of Criminal Procedure, 1973 (for short “the Cr.P.C.”) for quashing the FIR in M.Case No.11 of 1995.

2. According to the petition, respondent No.1 has filed a complaint in the court of learned Judicial Magistrate, First Class at Dedipada which was registered as Criminal Case No.12 of 1995 for offences under sections 406, 420 and 114 of the Indian Penal Code, 1860 (for short “the IPC”), wherein the court has passed the order under section 156 (3) of the Cr.P.C. for investigation. Pursuant to that, Dediapada Police Station has registered the offence as M.Case No.11 of 1995 after registering the complaint on 27.4.1995. According to the averments made in the petition, the complainant, as the proprietor of his firm, had entered into a hire purchase agreement with 20th Century Finance Corporation Limited on 3.10.1994. Under that agreement, the corporation had given him possession of a tempo bearing registration No.GJ-16-5763 and he had given different post-dated cheques. Only one of such cheques of the first installment had been credited, but the subsequent cheques submitted thereafter were returned by the bank with the remark that they may be referred to the drawer. The corporation had then demanded the due amount from the complainant by letters dated 19.2.1995 and 4.3.1995 and, he having failed to pay, the corporation's servants had gone to Dediapada and consulted him. Since the vehicle was not in good condition, it was

repaired and the servants of the corporation, after paying the repairing charges, took possession of the said vehicle under clause 12 of the hire purchase agreement.

3. Going through the FIR annexed with the petition, it appears to be the allegation of the complainant that the complainant had given 35 cheques for payment by installments and given certain other deposit receipts for security. The petitioners had not furnished certain documents to the complainant and despite there being no overdue, the vehicle in question was taken away by force from the garage where it was put for repairs. When the complainant approached the petitioners for custody of the vehicle, the petitioners had demanded the entire amount due. It is also alleged that the petitioners were engaging heavy-headed anti-social elements for threatening loanees like the original complainant.

4. The learned counsel argued on the basis that the hire purchase agreement between the parties completely covered the rights and liabilities of the parties and the dispute of a civil nature had arisen because of non-payment of installments by the original complainant. He further submitted that the Police had already

filed “C Summary” in the trial court after investigating into the FIR registered as above. In reply to the queries of the court, the learned counsel candidly admitted that he did not have even a copy of the petition, that the hire purchase agreement was never placed on record, that he did know what “C Summary” was and that he was helpless because the learned advocate who had drafted and filed the petition had passed away. Thereafter, the learned counsel clarified that he does not have a copy of the document known as “C Summary”, which might have been filed in the trial court. Therefore, in short, the learned counsel sought to argue the whole matter on the basis of the documents which were never filed in the court and on the basis of the information which he could not substantiate. The learned counsel relied upon the judgment of the Supreme Court in ***Charanjit Singh Chadha v. Sudhir Mehra [2001 AIR SCW 3487]*** and submitted that, in case of hire purchase agreement, it was always the right of the finance company to take over possession of the vehicle.

5. The submissions were made in air without any factual basis and without placing on record the documentary evidence claimed to be in possession of the learned counsel. The report of investigation known as “summary” could not have

been filed in the trial court in view of the injunction granted by this court as interim relief against further investigation. If it were already filed in the trial court before filing of the petition, it ought to have been mentioned in the petition itself. In any case, it was improper for the counsel to argue without producing a copy of the investigation report, if it were filed as claimed by him. It is amazing that the learned advocate would file his vakalatnama and argue the matter for final hearing only to claim that he does not have even a copy of the petition and then admit that the relevant documents ought to have been filed long back. The practice of the counsel to deliberately remain ill-prepared, even after opportunity being granted, and of making submissions without placing on record the relevant material, documents and facts, cannot be appreciated.

6. Therefore, in short, no case is made out to exercise the extraordinary jurisdiction of this court under section 482 of the Cr.P.C. and accordingly the petition is dismissed. Rule is discharged and interim relief is vacated with costs of Rs.5,000/- which shall be paid by the petitioner to respondent No.1. Sd/-

(D.H.Waghela, J.)

(KMG Thilake)